

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

Case No. 23-md-03084-CRB

This Document Relates to:

ALL CASES

**AFFIDAVIT OF TIFFANY R. ELLIS IN
SUPPORT OF PLAINTIFFS' LIST OF
DISPUTED ENTRIES FOR SPECIAL
MASTER REVIEW**

Judge: Honorable Barbara S. Jones

1 I, Tiffany R. Ellis, hereby declare as follows:

2 1. I am a partner of Peiffer Wolf Carr Kane Conway & Wise, an attorney licensed in
3 the States of Michigan and Illinois and duly admitted to practice before this Court, representing
4 Plaintiffs in the above caption action.

5 2. I submit this declaration in support of Plaintiffs' List of Disputed Entries from
6 Defendants' June 5, 2025 Privilege Log that was submitted for Master Review on June 23, 2025.
7 The Defendants' privilege log regarded a clawback notice sent which contained 15 entries
8 previously logged.

9 3. Plaintiffs incorporate the Discovery Letter Brief Regarding Disputed Entries for
10 Master Review filed by All Plaintiffs on March 4, 2025. *See* ECF No. 2434. Plaintiffs
11 incorporate the brief to support the specific reasons each entry on Plaintiffs' List of Disputed
12 Entries from Defendants' May 27, 2025 Privilege Log was challenged. The Brief included the
13 general background of the privilege dispute process to date, the legal standard for Plaintiffs
14 raising challenges to Defendants' privilege log entries, and a general argument for the challenges
15 Plaintiffs raised.

16 **Uber's June 5, 2025 Privilege Log**

17 4. On June 5, 2025, Defendants provided a clawback notice containing 135
18 documents. Additionally, Defendants provided a privilege log concerning 121 of the documents
19 on the clawback notice.

20 5. On June 12, 2025, Plaintiffs provided the Defendants with a list disputing all but
21 two of the entries from Defendants' June 6, 2025 clawback notice and privilege log. The list
22 included entries Plaintiffs challenged outright or identified as lacking sufficient information to
23 assess the privilege claim. Most of the documents were noted to be documents "identified for
24 preparation of Catherine Gibbons for deposition in Boston Retirement Systems litigation
25 containing highlights, thoughts and mental impressions of in-house and outside counsel
26 regarding pending litigation."

27 6. Defendants did not identify the names of attorneys associated with those
28 documents or explain why the underlying documents in and of themselves were privileged.

8. The Parties met and conferred on June 19, 2025, regarding the disputed entries. Plaintiffs provided Defendants with a list of entries a duplicate could not be found.

10. On June 23, 2025, the Plaintiffs provided a list of 21 entries remaining in dispute to the Master and Defendants. These documents contain no thoughts or mental impressions of in-house and outside counsel. At most, some documents contain minimal highlights but no indication an attorney made the highlights nor convey any confidential communication or work product. The attorney work-product doctrine is incorporated into Federal Rule of Civil Procedure 26(b)(3)(A), which states: “Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party’s attorney, consultant, surety, indemnitor, insurer, or agent).” See also *In re Grand Jury Subpoena*, 357 F.3d 900, 906 (9th Cir. 2004). Even if these documents are considered Work Product, the documents should be discoverable as Plaintiffs endeavored to find “substantial equivalent” produced documents of these internal Uber documents and communications documents, Fed. R. Civ. P. 26(b)(3)(A)(ii). “If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.” Fed. R. Civ. P. 26(b)(3)(B). Highlighting by an attorney on non-privileged documents does not transform those documents into privileged material. The mere act of highlighting does not reflect an attorney's mental impressions, conclusions, opinions, or legal theories, which are necessary for absolute work product protection.

/s/ Tiffany R. Ellis
Tiffany R. Ellis